

## Department of Energy

Washington, DC 20585

January 5, 1996

Dr. D. Clark Gibbs  
General Manager  
Energy Technology Engineering  
Center  
P.O. Box 7930  
Canoga Park, California 91309

Dear Dr. Gibbs:

This responds to your request for exemption from certain provisions contained in Title 10, Code of Federal Regulations, Part 835 (10 CFR 835), "Occupational Radiation Protection." Specifically, this response concerns your request for an exemption from the provisions in 835.3(a) and 835.3(b) that prohibit any action inconsistent with the requirements in 10 CFR 835, and specify that contractor management is responsible for compliance with 10 CFR 835. Because these requests for exemption pertain to similar topics, a single response to both exemption requests has been provided.

Based on the Office of Environment, Safety and Health (EH) staff review of this exemption request, I do not approve the request by the Energy Technology Engineering Center (ETEC) for an exemption from the provisions contained in 10 CFR 835.3(a) and (b). Granting these exemptions would release ETEC from the requirements to comply with 10 CFR 835. As part of the exemption request, ETEC proposes to follow the provisions of 10 CFR 20. However, the exemption request provides neither technical nor cost justification for the presumption that operations under 10 CFR 20 provide a significant benefit to this site. Accordingly, we do not find that this exemption request meets any of the special conditions specified in 10 CFR 820 section 820.62(d)(2).

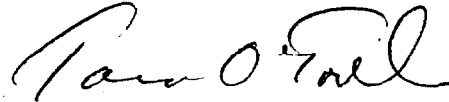
In addition, we note that ETEC is operating under an approved 10 CFR 835 Radiation Protection Program (RPP) that includes actions and schedules to comply with 10 CFR 835 by January 1, 1996. This RPP has been funded by the Office of Environmental Management (EM).



The EH review and analysis of the exemption request is contained in enclosure 1. The formal statement not approving the exemption request is contained in the Exemption Decision (enclosure 2).

The Department of Energy's EM staff concur with this decision.

Sincerely,



Tara O'Toole, M.D., M.P.H.  
Assistant Secretary  
Environment, Safety and Health

2 Enclosures

cc w/enclosures:

Thomas Grumbly, EM-1  
Robert K. Christopher, EH-3  
Docketing Clerk, EH-3  
Bruce G. Twining, Albuquerque  
Operations Office  
Radiological Control  
Coordinating Committee  
Price Anderson Amendments  
Act Coordinator

## Technical Position

### Energy Technology Engineering Center 10 Code of Federal Regulations Part 835

Energy Technology Engineering Center (ETEC) has requested exemption from certain requirements of Title 10, Code of Federal Regulations, Part 835 (10 CFR 835), "Occupational Radiation Protection." ETEC requests exemptions from the requirements of sections 3(a) and 3(b) of 10 CFR 835. ETEC intends to develop and implement a radiation protection program consistent with the requirements of 10 CFR 20 and applicable State of California statutes. The Office of Worker Protection Programs and Hazards Management (EH-52) does not concur with these exemption requests. Neither the Oakland Operations Office nor the cognizant Office of Environmental Management has indicated that the exemption is justified.

## Discussion

### Request

ETEC currently conducts Department of Energy (DOE) activities involving occupational radiation exposure utilizing radiation protection services provided by the Radiation Protection and Health Physics Services group of the Rocketdyne Division of Rockwell International (which operates ETEC). Because of the diverse nature of the activities undertaken by Rockwell International, involving activities authorized by DOE as well as activities licensed by both the U.S. Nuclear Regulatory Commission (NRC) and the State of California, Rocketdyne has developed and implemented a radiation protection program substantially in compliance with the requirements of 10 CFR 20 and applicable State of California statutes. In its exemption requests, ETEC indicates that implementation of this program provides adequately for the radiological health and safety of individuals performing DOE activities at ETEC facilities, and that compliance with part 835 is not necessary.

ETEC states that it is seeking an exemption from two provisions: 10 CFR 835.3(a) and 3(b). 10 CFR 835.3(a) states: "No person or DOE personnel shall take or cause to be taken any action inconsistent with the requirements of: (1) This part; or (2) Any program, plan, or other process established by this part." 10 CFR 835.3(b) states: "With respect to a particular DOE activity, contractor management shall be responsible for compliance with the requirements of this part."

From the arguments contained in the exemption request, it appears that ETEC is seeking an exemption pursuant to § 820.62 entitled "Criteria." The request states that the exemptions are not prohibited by law; will not present undue risk to the public health and safety, the environment, or facility workers; and are consistent with the safe operation of a DOE nuclear facility.

ETEC also states that it meets the "special circumstances" criterion, specifically, (d)(2). Section 820.62 (d)(2) states: "Application of the requirement in the particular circumstances would not serve or is not necessary to achieve the underlying purpose, or would result in resource impacts which are not justified by the safety improvements."

### Analysis

EH-52 has reviewed ETEC's requests for exemption and finds that the requests do not meet the requirements of 10 CFR 820. Specifically, ETEC has not provided sufficient justification that the requested exemptions meet 10 CFR § 820.62 (d)(2). The following analysis provides the rationale for denial of ETEC's request.

#### **Part 835 Inappropriate or Unnecessary**

In its exemption requests, ETEC indicates that it believes that the provisions of part 835 are inappropriate for its type of activities and that its proposed radiation protection program, adopted by compliance with part 20, would provide adequate protection for the radiological health and safety of those individuals performing the contract's work. In short, ETEC simply believes that compliance with part 835 is unnecessary to achieve occupational radiation protection.

For instance, with regard to the appropriateness of the coverage of part 835, ETEC states, "The provisions of 10 CFR 835 are most appropriate for operations being conducted at facilities and sites actively involved in nuclear production and utilization." This office has never agreed with this position and considers part 835 to be applicable to, and appropriate for, the full range of its activities, including decontamination and decommissioning projects such as those conducted by ETEC.

Second, with regard to ETEC's position that part 20 should be considered a "baseline of acceptable practices" and that compliance with part 20 affords adequate protection making compliance with part 835 unnecessary, we note that in the preamble to final rule 10 CFR 835 [see 58 Federal Register 65465], DOE stated, "While agreeing with the goal of consistency, the Department believes that it must promulgate its own standards because of the unique nature and diversity of radiological activities within the DOE complex compared to the commercial nuclear sector regulated by NRC. Issuing this final rule also allows the Department to establish more rigorous requirements than those contained in 10 CFR part 20 in areas of particular concern to the DOE. Specific examples include contamination control, posting, and dosimetry." Thus, EH-52 considers part 835 to be the baseline of acceptable practices for DOE, and rejects ETEC's bald assertions that compliance with part 20 affords adequate protection.

ETEC does not explain why it believes that part 20 provides adequate protection and provides no data analysis to support this position. This Office notes that part 835 establishes specific requirements for surface contamination control, airborne radioactivity monitoring, personnel monitoring, personnel training, material release to controlled areas, and radiological protection program recordkeeping that exceed the requirements of part 20. EH-52 believes that these provisions provide substantial improvements in radiological safety as compared to that provided through compliance with part 20. In addition, ETEC indicates that its current

regulatory authorities have found that its current program provides for adequate radiological safety but has not provided documentation to support this statement.

In summary, with regard to the substitution of part 20 for part 835, we note that ETEC has not provided sufficient indication that explains or justifies why compliance with part 835 is inappropriate or unnecessary.

### **Impact Upon Resources**

With regard to the alternate prong of § 820.62 (d)(2), ETEC has failed to provide sufficient information regarding the impact upon its resources if it implemented part 835. ETEC indicates that approval of its exemption requests would allow direction of resources toward decontamination and decommissioning activities rather than meeting inappropriately stringent sections of part 835. ETEC has not provided any documentation supporting its claim that certain unidentified sections of part 835 are inappropriately stringent, nor has ETEC provided documentation of the expected financial or operational impact of efforts to comply with these requirements.

Indeed, EH-52 notes that ETEC has utilized the Radiation Protection Requirements Implementation Management System for preparation of its Radiation Protection Program (RPP), has submitted an RPP in accordance with the requirements of part 835, and that its RPP has been approved by DOE. Moreover, since it appears from the exemption request that ETEC has previously developed an RPP as necessary to comply with part 20, DOE believes that any additional effort needed to comply with part 835 would cause minor impacts upon its resources.

ETEC also indicates that due to the short projected life cycle of its operations (3-5 years), implementation of the requirements of part 835 will have an adverse financial impact upon its operations that is not commensurate with the benefit to be gained. ETEC has not provided substantiation for this comment and has not described the magnitude of the expected financial impact.

ETEC is currently subject to the requirements of DOE Order 5480.11, "Radiation Protection for Occupational Workers," the "U.S. Department of Energy Radiological Control Manual," and implementation plans developed pursuant to these documents. Since the provisions of these documents are largely consistent with those of 10 CFR 835 (and in several cases, much more stringent), EH-52 does not believe that efforts to ensure compliance with the provisions of part 835 will have substantial impact on the resources necessary to implement the ETEC radiological control program.

### **Conclusion**

Consistent with the technical position provided above, EH-52 does not concur with the subject exemption requests.

## PART 835 EXEMPTION DECISION

Pursuant to title 10 Code of Federal Regulations part 820.61 (10 CFR 820.61), the Assistant Secretary for Environment, Safety and Health (EH-1) is authorized to exercise authority on behalf of the Department of Energy (DOE) with respect to requests for exemptions from nuclear safety rules relating to radiological protection of workers, the public, and the environment.

On June 14, 1995, the Oakland Operations Office forwarded to EH-1 requests from the Energy Technology Engineering Center (ETEC) for exemptions from certain requirements of 10 CFR 835, "Occupational Radiation Protection." In particular, ETEC requests relief from the requirements of 10 CFR 835.3(a) and 3(b).

Based on a review of the supporting documentation, the exemption criteria contained in 10 CFR 820.62, and the technical position prepared by the Office of Worker Protection Programs and Hazards Management, I find that the request set forth above has not been justified for relief from the requirements in the stated sections of 10 CFR 835. Specifically, I find that the exemption criteria in 10 CFR 820.62 have not been met. I have read the exemption request and the technical position prepared by EH-52 and have determined that the exemption request does not meet the special circumstances specified in 10 CFR 820 section 820.62(d)(2).

On the basis of the foregoing, I hereby disapprove ETEC's request for exemption from the stated section of 10 CFR 835. Pursuant to 10 CFR 820.66, ETEC has 15 days from the date of the filing of this decision to file a Request to Review with the Secretary. The Request to Review shall state, specifically, the respects in which the exemption determination is claimed to be erroneous, the grounds of the request, and the relief requested.



Tara O'Toole, M.D., M.P.H.  
Assistant Secretary  
Environment, Safety and Health

1/5/96  
Date